

SEP 04 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

HUMBERTO VALLIN,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 05-74253

Agency No. A28-727-740

MEMORANDUM *

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted August 26, 2008**

Before: SCHROEDER, KLEINFELD, and IKUTA, Circuit Judges.

Humberto Vallin, a native and citizen of Mexico, petitions for review of the Board of Immigration Appeals' ("BIA") order dismissing his appeal from an immigration judge's removal order. Pursuant to the REAL ID Act of 2005, we

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

construe Vallin's transferred habeas petition as a petition for review. *See Martinez-Rosas v. Gonzales*, 424 F.3d 926, 928-29 (9th Cir. 2005). We dismiss the petition for review.

We lack jurisdiction over Vallin's ineffective assistance of counsel claim because he has not exhausted this claim before the BIA. *See Liu v. Waters*, 55 F.3d 421, 426 (9th Cir. 1995) (ineffective assistance of counsel claims must be exhausted through a motion to reopen before the BIA).

We do not consider Vallin's remaining contentions because they were addressed in *Vallin v. Ashcroft*, No. 03-70814 (9th Cir. Nov. 16, 2004). We deny Vallin's request to stay the mandate.

PETITION FOR REVIEW DISMISSED.